ORIGINAL

Approved: [signature]
NOAH SOLOWIEJCZYK
Assistant United States Attorney

Before: HONORABLE KEVIN N. FOX
United States Magistrate Judge
Southern District of New York

U.S. DISTRICT COURT FILED JUN 08 2016 S.D. OF N.Y.

16 MAG 3628

UNITED STATES OF AMERICA,

v.

JONATHAN ROPER,

Defendant.

SEALED COMPLAINT

Violations of 18 U.S.C. §§ 371 and 2; 42 U.S.C. § 1320a-7b(b)(2)(B)

COUNTY OF OFFENSE: NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

BRUCE WAYNE, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE

1. From at least in or about March 2013 up to and including in or about November 2015, in the Southern District of New York and elsewhere, JONATHAN ROPER, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B).

2. It was a part and object of the conspiracy that JONATHAN ROPER, the defendant, and others known and unknown, unlawfully, willfully, and knowingly would and did offer and pay remuneration (including kickbacks, bribes, and rebates), directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering a good, facility, service, and item for which payment

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may be made in whole and in part under a Federal health care program, in violation of Title 42, United States Code, Section 1320a-7b(b)(2)(B).

Overt Acts

3. In furtherance of this conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about April 2013, JONATHAN ROPER, the defendant, in his capacity as a Specialty Sales Professional ("SSP") for a pharmaceutical company ("Pharma Company-1"), organized and attended a speaker program ("Speaker Program") at a restaurant located in Manhattan, New York. The doctor ("Doctor-1") who served as the speaker ("Speaker") for this Speaker Program received compensation from Pharma Company-1 in connection with this Speaker Program in order to induce Doctor-1 to prescribe a fentanyl-based sublingual spray manufactured by Pharma Company-1 (the "Fentanyl Spray").

b. In or about July 2013, ROPER, in his capacity as an SSP for Pharma Company-1, organized and attended a Speaker Program in Manhattan, New York. The doctor ("Doctor-2") who served as the Speaker for this Speaker Program received compensation from Pharma Company-1 in connection with this Speaker Program in order to induce Doctor-2 to prescribe the Fentanyl Spray.

c. On or about May 6, 2014, ROPER, in his capacity as a District Manager for Pharma Company-1, sent an email to other Pharma Company-1 employees instructing them that certain doctors who were Speakers were expected to prescribe large volumes of the Fentanyl Spray in return for having been selected and compensated as Speakers.

(Title 18, United States Code, Section 371.)

COUNT TWO

4. From at least in or about March 2013 up to and including in or about November 2015, in the Southern District of New York and elsewhere, JONATHAN ROPER, the defendant, willfully and knowingly offered and paid remuneration (including kickbacks, bribes, and rebates), directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to purchase, lease, order, and arrange for and

recommend purchasing, leasing, and ordering a good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program.

(Title 42, United States Code, Section 1320a-7b(b)(2)(B), and Title 18, United States Code, Section 2.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

5. I am a Special Agent with the FBI currently assigned to the FBI's New York Health Care Fraud Task Force, and I have been personally involved in the investigation of this matter. This affidavit is based in part upon my conversations with law enforcement agents and witnesses, and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of this investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Overview of the Speaker Program Kickback Scheme

6. As set forth in more detail below, JONATHAN ROPER, the defendant, and others known and unknown, participated in a scheme to pay doctors in connection with Pharma Company-1's Speaker Program in order to induce these doctors to prescribe the Fentanyl Spray. Doctors selected as Speakers by Pharma Company-1 were compensated for purportedly providing educational presentations regarding the Fentanyl Spray to a peer-level audience of healthcare professionals using a preapproved slide presentation. In reality, however, many of the Speaker Programs that ROPER directly organized as an SSP, as well as many of the Speaker Programs that were organized by ROPER's subordinates once he became a District Manager, were predominantly social gatherings at high-end restaurants that involved no education and no slide presentation.

7. Furthermore, many of the Speaker Programs JONATHAN ROPER, the defendant, directly organized as an SSP, as well as many of the Speaker Programs that were organized by ROPER's subordinates once he became a District Manager, lacked an appropriate audience of healthcare professionals. The sign-in sheets for such Speaker Programs were at times forged with ROPER's knowledge so as to make it appear that the Speaker

Programs had an appropriate audience of healthcare professionals when, in truth and fact, they did not.

8. JONATHAN ROPER, the defendant, also provided remuneration to doctors, including doctors who served as Speakers and attended Speaker Programs, that bore no relation to any educational purpose, contrary to Pharma Company-1's written policies and procedures. This illegitimate remuneration, which was in addition to the significant Speaker Program fees, included paying for alcoholic drinks for doctors.

9. After JONATHAN ROPER, the defendant, was promoted to the position of District Manager at Pharma Company-1 in or about October 2013, ROPER instructed the SSPs that he supervised that they should expect and demand that those doctors who were selected and compensated by Pharma Company-1 as Speakers should prescribe large quantities of the Fentanyl Spray in return. As described in more detail below, it was well understood among Pharma Company-1 employees that doctors were selected as Speakers in order to induce these doctors to prescribe large quantities of the Fentanyl Spray and ROPER so instructed the sales force that he supervised.

Payments To, and Fentanyl Spray Prescriptions By, Doctor-1 and Doctor-2

10. As a District Manager, JONATHAN ROPER, the defendant, was responsible for the sales territory that included Doctor-1 and Doctor-2, who both served as Speakers for Pharma Company-1 during ROPER's tenure as District Manager. ROPER also served as the SSP assigned to Doctor-1 and Doctor-2 prior to ROPER's promotion to District Manager. Based on my review of publicly available data maintained by the Centers for Medicare and Medicaid Services ("CMS") regarding remuneration provided by pharmaceutical companies to doctors, I know that Doctor-1 and Doctor-2 were both highly compensated by Pharma Company-1 during ROPER's tenure as a result of their participation in the Speaker Program. By way of example, in 2014, Pharma Company-1 reported to CMS that it made payments of approximately $147,245 in Speaker Program fees to Doctor-1 and payments of approximately $112,340 in Speaker Program fees to Doctor-2. In 2014, Doctor-1 and Doctor-2 were two of the top recipients of Speaker Program fees from Pharma Company-1 in the entire United States.

11. Furthermore, based on my review of Medicare Part D billing records, I know that Doctor-1 and Doctor-2 were among the top prescribers of the Fentanyl Spray in the entire United States during the time period when JONATHAN ROPER, the

defendant, was a District Manager. By way of example, in 2014 Doctor-1 accounted for approximately $1.2 million worth of prescriptions of the Fentanyl Spray that were reimbursed by Medicare, which made Doctor-1 approximately the 14th highest prescriber of the Fentanyl Spray in the United States based on Medicare Part D billing. In 2014, Doctor-2 accounted for approximately $1.4 million worth of prescriptions of the Fentanyl Spray that were reimbursed by Medicare, making Doctor-2 approximately the 9th highest prescriber of the Fentanyl Spray in the United States based on Medicare Part D billing. Based on my review of records obtained from the New York State Department of Health, Bureau of Narcotics Enforcement, as well as pricing data compiled by a major pharmacy benefit management organization in 2012 with respect to the Fentanyl Spray, I believe that in 2014, Doctor-1 prescribed over $3 million worth of the Fentanyl Spray that was reimbursed by various private insurance companies, and that Doctor-2 prescribed over $2 million worth of the Fentanyl Spray that was reimbursed by various private insurance companies.

Background on the Fentanyl Spray and the TIRF REMS Program

12. Based upon my training and experience, my participation in this investigation, my review of publications issued by the Drug Enforcement Administration ("DEA"), and my review of public statements issued by Pharma Company-1 and the United States Food and Drug Administration ("FDA"), I have learned, among other things, the following regarding Fentanyl and Pharma Company-1's Fentanyl Spray:

a. Fentanyl is a synthetic opioid that is classified as a Schedule II controlled substance under the Controlled Substances Act. Fentanyl is primarily utilized as a pain relief medication and is approximately 100 times more potent than morphine as an analgesic. Fentanyl can serve as a direct substitute for heroin in opioid-dependent individuals. Fentanyl is a dangerous substitute for heroin because it is much more potent and can result in frequent overdoses that can lead to respiratory depression and death.

b. In or about January 2012, the FDA approved the Fentanyl Spray manufactured by Pharma Company-1 solely for "the management of breakthrough pain in cancer patients 18 years of age and older who are already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain." The Fentanyl Spray is the only FDA-approved product that Pharma Company-1 currently has on the market. For 2015, Pharma

Company-1 reported approximately $330 million in net revenue from the Fentanyl Spray.

13. Based upon my training and experience, my participation in this investigation, my review of publicly available reports and records, and my review of a report prepared by a Special Agent with the United States Department of Health and Human Service, Office of Inspector General ("HHS OIG") participating in this investigation ("Agent-1"), I have learned, among other things, the following regarding the FDA's Transmucosal Instant-Release Fentanyl ("TIRF") Risk Evaluation and Management Strategy ("REMS") program (the "TIRF REMS Program"):

a. The TIRF REMS Program was established in order to "mitigate the risk of misuse, abuse, addiction, overdose, and serious complications due to medication errors by: (1) Prescribing and dispensing TIRF medicines only to appropriate patients, which includes use only in opioid-tolerant patients; (2) Preventing inappropriate conversion between TIRF medicines; (3) Preventing accidental exposure to children and others for whom it was not prescribed; and (4) Educating prescribers, pharmacists, and patients on the potential for misuse, abuse, addiction, and overdose TIRF medicines."

b. Under the TIRF REMS Program, physicians may only prescribe a TIRF drug, which includes the Fentanyl Spray, after they have enrolled in the TIRF REMS Program and completed the necessary training and testing associated with enrollment.

Pharma Company-1's Policies and Procedures Regarding Interactions With Healthcare Professionals and Speaker Programs

14. Based on my review of Pharma Company-1's Code of Conduct, which was adopted in or about 2013 (the "Code of Conduct"), and the Pharmaceutical Research and Manufacturers of America's Code on Interactions with Healthcare Professionals (the "PhRMA Code"),[1] I have learned, among other things, the following:

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[1] Pharma Company-1 expressly adopted the PhRMA Code in its Code of Conduct. Based on my review of documents obtained in connection with this investigation, I also know that the contents of the PhRMA Code were included in Pharma Company-1's training materials provided to its SSPs.

a. Pharma Company-1 employees are prohibited from providing items that do not serve any educational purpose to healthcare professionals. Meals can be provided to healthcare professionals only if such meals are modest and provided at a location that is conducive to discussing educational information. Any meals or other items of value provided to healthcare professionals must be accurately documented by Pharma Company-1 employees.

b. Pharma Company-1 employees cannot offer anything of value to a person intended to influence that person to recommend or purchase a product or service that may be reimbursed by the federal government.

c. "[E]ntertainment or recreational benefits" should not be offered to healthcare professionals "regardless of (1) the value of the items, (2) whether the company engages the healthcare professional as a speaker or consultant, or (3) whether the entertainment or recreation is secondary to an educational purpose." Furthermore, a pharmaceutical company must "ensure that speaking arrangements are neither inducements nor rewards for prescribing a particular medicine or course of treatment" and that "decisions regarding the selection or retention of healthcare professionals as speakers should be made based on defined criteria such as general medical expertise and reputation, knowledge and experience regarding a particular therapeutic area, and communications skills."

15. During the course of this investigation, I have reviewed an internal presentation from Pharma Company-1's Medical Marketing Communications department regarding Pharma Company-1's Speaker Programs (the "Speaker Programs Presentation"), and an internal operating procedure document adopted by Pharma Company-1 in or about February 2014 relating to Pharma Company-1's Speaker Programs (the "Speaker Programs Policy"). Based on my review of the these documents, I have learned, among other things, the following:

a. The objective of the Pharma Company-1 Speaker Programs is "[p]eer-to-[p]eer on-label education of healthcare professionals." "The specific content of the [Speaker Program] is developed by [Pharma Company-1] and approved by the [Promotional Review Committee] prior to use." The Pharma Company-1 employee who organizes a Speaker Program must ensure that the Speaker uses the approved slide decks, must monitor the Speaker Program for compliance with all other relevant Pharma Company-1 policies, and must report any Speaker's non-compliance with these policies.

b. The selection of a healthcare professional as a Speaker is not to be used as inducement to prescribe. A healthcare professional must also never be engaged as a Speaker in order to "build[] a relationship with or . . . gain access to [the healthcare professional]." Speakers are to be nominated by Pharma Company-1's sales unit based on medical expertise that follows established criteria and not based on prescribing patterns, and "[a] speaker must be selected only if there is a legitimate business need."

c. Speaker Program attendees "should include appropriate healthcare providers who treat and manage patients with breakthrough cancer pain." The proper audience for a Speaker Program "should be peer-level and not direct subordinates of [the] Speaker," and spouses and other guests are generally not permitted to attend Speaker Programs. Moreover, "[t]here must be at least two or more [healthcare professionals] in attendance" at a Speaker Program, and "[i]f there are fewer than two confirmed attendees, three full business days or more prior to the event, [Pharma Company-1] must cancel the event."

d. Pharma Company-1 Speaker Programs must occur at locations that are conducive to the exchange of information. All meals provided at Speaker Programs must be at most "$125 per person (includes meal, beverage, tax and gratuity," and "alcohol provided at such events should not be in excess."

e. At the beginning and end of Speaker Programs, the Pharma Company-1 employee who organized the event must ensure that all attendees have legibly completed the sign-in sheet.

16. During the course of this investigation, I have reviewed certain Pharma Company-1 employee training materials relating to the area of compliance (the "Training Materials"). Based on my review of the Training Materials, I have learned, among other things, that Pharma Company-1 employees received training regarding the prohibitions on providing illegal kickbacks to healthcare professionals. The Training Materials specifically state that "under the anti-kickback statute, neither a legitimate purpose for an arrangement (e.g., physician education), nor a fair market value payment, will necessarily protect remuneration if there is also an illegal purpose (i.e., the purposeful inducement of business)."

17. Based on my participation in this investigation, I have learned that in order to serve as a Speaker for Pharma Company-1, a doctor would enter into a formal written Speaker

Agreement with Pharma Company-1. Based on my review of the Speaker Agreement separately executed by Doctor-1 and Pharma Company-1 and Doctor-2 and Pharma Company-1 in or about March 2014 (the "Speaker Agreement"), I have learned, among other things, the following:

a. Under the Speaker Agreement, the "Speaker agrees to educate a selected target audience in venues consistent with industry and company policies." Furthermore, the Speaker Agreement states that "[e]ach speaker will be requested, based on their availability, to present pre-approved program slides consistent with labels of [Pharma Company-1] products, therapeutic category, clinical best practices and/or disease state awareness."

b. The Speaker Agreement entered into between Pharma Company-1 and Doctor-1 in or about March 2014 further specifies that Doctor-1 will receive $3,000 as compensation for each in-person Speaker Program completed by Doctor-1. The Speaker Agreement entered into between Pharma Company-1 and Doctor-2 in or about March 2014 further specifies that Doctor-2 will receive $2,200 as compensation for each in-person Speaker Program completed by Doctor-2.

As An SSP, ROPER Organized Sham Speaker Programs and Provided Other Illegitimate Remuneration to Speakers

18. As part of this investigation, I participated in interviews of a former employee of Pharma Company-1 ("CW-1").[2] From my participation in the interviews of CW-1, I have learned, among other things, the following:

a. Pharma Company-1 hired JONATHAN ROPER, the defendant, as an SSP for the New York City area in or about March 2013. Shortly after being hired, ROPER became the designated SSP for Doctor-1 and Doctor-2. During his tenure as an SSP, ROPER was supervised by CW-1.

[2] CW-1 is assisting the Government's investigation in the hopes of obtaining leniency at sentencing in connection with CW-1's conduct while employed at Pharma Company-1. Information provided by CW-1 has been corroborated by other evidence, including, but not limited to, sign-in sheets from Speaker Programs, email and text message communications obtained during the course of this investigation, and interviews with other former employees of Pharma Company-1.

b. In or about July 2013, ROPER used a Pharma Company-1 credit card, with the permission of CW-1 and other members of Pharma Company-1 management, to take multiple doctors, including at least one doctor who was a Speaker for Pharma Company-1, out socially to a bar and buy them alcoholic drinks. ROPER spent approximately $2,000 on the Pharma Company-1 credit card in one evening at the bar.[3]

c. Early in ROPER's tenure as an SSP, CW-1 attended a purported Speaker Program at a restaurant in Manhattan, New York organized by ROPER where Doctor-1 was scheduled to serve as the Speaker. Doctor-1 never showed up at the Speaker Program. Instead, CW-1 had dinner with ROPER and a few of ROPER's friends, none of whom CW-1 believed were healthcare professionals. CW-1 believes that ROPER submitted sign-in sheets for the dinner as if it were a legitimate Speaker Program and that Doctor-1 received an honorarium for this Speaker Program despite the fact that Doctor-1 did not attend or give an educational presentation. Because there were attendees present at the dinner that were not permitted to be at a legitimate Speaker Program, CW-1 believes that ROPER had to have forged the sign-in sheet for the Speaker Program so that it appeared that the required healthcare professionals had attended who had not, in fact, been present.

d. A sign-in sheet for a Speaker Program organized by ROPER and led by Doctor-1 that occurred in the evening of April 9, 2013 reflects that CW-1 attended this event. CW-1 had no recollection of attending this Speaker Program. After checking CW-1's calendar from this time period, CW-1 stated, in substance and in part, that CW-1 did not believe CW-1 attended this Speaker Program because CW-1 was scheduled to take a flight to Buffalo, New York very early on April 10, 2013, and thus would not have attended a Speaker Program in Manhattan the night before.[4] In addition, although the sign-in sheet for the Speaker Program contained CW-1's name, it did not contain CW-1's signature. CW-1 stated that CW-1 would have signed the sign-in sheet if CW-1 had actually attended the Speaker Program.

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[3] JONATHAN ROPER, the defendant, sent a text message with a photograph of the relevant receipt to CW-1, which CW-1 provided to law enforcement during this investigation.

[4] CW-1 provided law enforcement with a photograph of a receipt indicating that CW-1 parked CW-1's vehicle at Newark Airport early on April 10, 2013, as well as a photograph of a receipt indicating that CW-1 made a purchase in the vicinity of Buffalo, New York at approximately 8:40 a.m. on April 10, 2013.

e. After ROPER became Doctor-1's designated SSP, the volume of Doctor-1's prescriptions of the Fentanyl Spray increased dramatically. ROPER was able to get more Speaker Programs allocated to Doctor-1.

f. ROPER socialized with Doctor-1, including taking Doctor-1 out to dinner on at least one occasion and taking Doctor-1 to a hockey game. ROPER once sent a text message to CW-1 with a photograph of ROPER and Doctor-1 together at a New York Rangers hockey game.[5] CW-1 also knew that ROPER socialized with Doctor-2, which included ROPER and Doctor-2 going to hockey games together and going out together to bars and clubs. ROPER stated to CW-1 at one point that ROPER wanted to get everyone, including doctors, together to go to a strip club.

19. Based on my review of a document obtained during this investigation that contained an analysis of "strengths, weaknesses, opportunities, and threats" (the "SWOT Analysis") for the "Manhattan Territory" that was prepared by JONATHAN ROPER, the defendant, and interviews of CW-1 with respect to this document, I have learned, among other things, the following:

a. ROPER prepared the SWOT Analysis in advance of Pharma Company-1's national sales meeting in or about 2013. SSPs typically completed a SWOT Analysis for their sales territory in advance of the national sales meeting.

b. With respect to one of the doctors ("Doctor-3") within ROPER's sales territory, ROPER stated in the SWOT Analysis, in substance and in part, that his goal was "getting [Doctor-3] to write for [the Fentanyl Spray] consistently and achieving ROI [Return on Investment] with [Doctor-3]." ROPER further stated in the SWOT Analysis, in substance and in part, that ROPER needed to "get[] the message across that if [Doctor-3] wants lunches and to speak for [the Fentanyl Spray], [Doctor-3] needs to prescribe it." According to CW-1, CW-1 and ROPER had an understanding that if Doctor-3 wanted Speaker Programs allocated to Doctor-3, Doctor-3 needed to prescribe significant quantities of the Fentanyl Spray.

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[5] CW-1 showed law enforcement a copy of a photograph of ROPER and Doctor-1 together at a hockey game that was saved on CW-1's cellular phone.

c. With respect to Doctor-2, ROPER stated in the SWOT Analysis, in substance and in part, that ROPER's goal was "to have [Doctor-2] speaking on our behalf 1-2 times a week, [and] have [the Fentanyl Spray] as his main 'go-to' medication for all of his patients suffering from breakthrough pain."[6] ROPER further stated in the SWOT Analysis, in substance and in part, that ROPER sought to "[h]ave [Doctor-2] speaking on a regular basis as well as writing big scripts on a regular basis."

As a District Manager, ROPER Utilized Speaker Programs As a Means to Induce Doctors To Prescribe the Fentanyl Spray

20. Based on my review of documents obtained during the course of this investigation, as well as my participation in the interviews of CW-1, I have learned that Pharma Company-1 promoted JONATHAN ROPER, the defendant, to the position of District Manager for the sales territory that included New York City in or about October 2013. As is described in further detail below, ROPER attended numerous Speaker Programs as a District Manager that were organized by SSPs who he supervised that involved no education regarding the Fentanyl Spray and no slide presentation. Moreover, ROPER was present at Speaker Programs organized by SSPs that he supervised where sign-in sheets were forged to falsely reflect that healthcare professionals had attended who were not, in fact, present. ROPER also instructed the SSPs that he supervised to expect and demand that those doctors who were selected as Speakers prescribe large quantities of the Fentanyl Spray in return.

21. Based on my review of electronic communications between Pharma Company-1 employees obtained during the course of this investigation, I have learned, among other things the following:

a. On or about May 6, 2014, JONATHAN ROPER, the defendant, sent an email to multiple SSPs who were subject to ROPER's supervision, among others, that included an attachment that was a spreadsheet listing various doctors and whether these doctors' prescriptions of the Fentanyl Spray had increased or

[6] As is described above, the Fentanyl Spray is only approved by the FDA for breakthrough cancer pain, and not all forms of breakthrough pain.

decreased. In the email, ROPER stated, in substance and in part, the following:

> Where is the ROI [Return on Investment]??!!! All prescribers from this team that are on this list are [Pharma Company-1] speakers. We invest a lot of time, $, blood, sweat, and tears on "our guys" and help spreading the word on treating BTCP [breakthrough cancer pain]. We hire only the best of the best to be apart [sic] of our speaker bureau and dropping script counts is what we get in return? As a team we are lagging behind once again and once again not on pace to meet our quarterly goal. Time for your main guys to step it up and give you the ROI you deserve.
>
> The most common question asked at the conclusion of a speaker program is alway [sic], "doc, how many pts [patients] do you currently have on [the Fentanyl Spray]?" Lets not even discuss what some of these prescribers answers may be but I will tell you right now, not enough!
>
> This is a slap in the face to all of you and is a good indication as to why NONE of you are climbing in the rankings this quarter. DO NOT be afraid to set your expectations and make them crystal clear as to what they are before, during, and after HIRING these priviliged [sic] set of docs who are fortunate enough to be a part of the best speaker bureau in the market in the world of BTCP [breakthrough cancer pain]. Please handle this immediately as funding will not be given out to anymore "let downs" in the future. Thanks.
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> $$$$

b. On or about March 28, 2014, ROPER sent an email to various SSPs who ROPER supervised, with the subject heading "END IS NEAR....," that stated, in substance and in part, the following:

> NYC,
>
> Good luck today, biggest Friday of the quarter is here!! Still 4 days including today to get RXs filled, put more $$ in your pockets and for those of you who haven't met your baseline as of yet, there's still time left! You have all heard it before, LIVE

WITH YOUR TOP DOCS, and even more importantly ASK for their business.

We all benefit from having the best ROO [Rapid-Onset Opiod] in its class, that being said, there is no excuse for any of your docs to not take care of you at this crucial time of the quarter. For the first time as a company, we are facing the challenge of meeting our quarterly goal. That being said, its time for all of your your [sic] top prescribers (esp. SPEAKERS) to give back for all of the hard work, long days and late nights you have spoiled them with. Keep pushing as hard as you all possibly can and remember why today is especially most important being that it will set you up for a few hopeful RXs sat/sun and a HUGE Monday!!!

. . . .

c. On or about February 20, 2014, ROPER sent an email to various SSPs who ROPER supervised, that stated, in substance and in part, the following:

NYC,

Everyone on this team has stepped it up the past week or so. I am extremely proud and optimistic at the movement that has been going on. We MUST keep pushing as hard as we can to get every SSP apart of this team on the board daily! NOW is the time to attain as many RXs as possible going into the NSM [National Sales Meeting]. NYC needs to go into this meeting on fire, and show our entire company that we belong in the top 3 nationally, and aren't just carried by one or two reps.

One week until [National Sales Meeting], and I need everyone on this team to work their relationships. Ask each of your top prescribers to do whatever they can to make you look like an absolute superstar for the next week, especially while we are [at the National Sales Meeting]. This is what reps work all year for, do not be hesitant in asking your docs to give you the business in which you are owed, deserve, and will help in making you shine at [the National Sales Meeting]. Show everyone at [Pharma Company-1] that your time has been well spent and the formula has been followed. All of the breakfasts, lunches, ISPs [Speaker Programs], and top customer service to go along with helping provide your docs pts with the best ROO [Rapid-Onset Opioid] product in its class for treating BTCP [breakthrough cancer pain]. This has to be reciprocated to you for all of your hard work! If you have a relationship, asking this of your docs should be one of the easiest things you do as an SSP. You all have claimed to have relationships so this should not be a problem. If you feel that you cannot complete this simple task with the most positive results, then there is no point in attending [the National Sales Meeting].

. . . .

Thanks in advance for all of your efforts, and I ask all of you to please ENSURE that we have the best week of sales we have ever had as a team. The time is now!!

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22. As part of this investigation, I have participated in interviews of two former SSPs at Pharma Company-1 ("CW-2"[7] and "CW-3"[8]) that JONATHAN ROPER, the defendant, supervised in his capacity as a District Manager. Based on my participation in these interviews, I have learned, among other things, the following:

[7] CW-2 is assisting with the Government's investigation in the hopes of not being charged criminally in connection with CW-2's conduct while employed at Pharma Company-1. Information provided by CW-2 has been corroborated by other evidence, including, but not limited to, sign-in sheets from Speaker Programs, email and text message communications obtained during the course of this investigation, and interviews with other former employees of Pharma Company-1.

[8] CW-3 is assisting with the Government's investigation in the hopes of not being charged criminally in connection with CW-3's conduct while employed at Pharma Company-1. Information provided by CW-3 has been corroborated by other evidence, including, but not limited to, sign-in sheets from Speaker Programs, email and text message communications obtained during the course of this investigation, and interviews with other former employees of Pharma Company-1.

a. Both CW-2 and CW-3 stated, in substance and in part, that ROPER knew that many Speaker Programs were largely social events that were not educational in nature. Both CW-2 and CW-3 attended Speaker Programs with ROPER where no formal slide presentation or other formal educational presentation regarding the Fentanyl Spray occurred. ROPER expressed no concern regarding the nature of these Speaker Programs. More specifically:

i. CW-2 and ROPER both attended a Speaker Program at a restaurant in Manhattan, New York in or about February 2015 that was led by Doctor-1 and organized by another SSP ("SSP-1") supervised by ROPER. Doctor-1 did not use the preapproved slide presentation during this Speaker Program or give any other formal presentation regarding the Fentanyl Spray. This Speaker Program was predominantly a social gathering.[9]

ii. In or about the summer of 2014, CW-2 attended a Speaker Program with ROPER where the only attendees were the Speaker and Pharma Company-1 employees. No education regarding the Fentanyl Spray occurred at this Speaker Program as there were no healthcare professionals present to educate. According to CW-2, in order to make the Speaker Program appear legitimate, the sign-in sheet would have had to have been forged to reflect that healthcare professionals had attended who had not, in fact, been present.

iii. CW-3 and ROPER attended a Speaker Program that occurred at a restaurant in Manhattan, New York on or about March 25, 2014, where the only attendees were the designated Speaker (Doctor-2), subordinates of Doctor-2 from Doctor-2's office, and Pharma Company-1 employees. According to CW-3, none of the attendees were present for the purpose of being educated as the only attendees were either from Doctor-2's own office or Pharma Company-1. No education or formal slide

[9] After reviewing the sign-in sheet for the February 2015 Speaker Program, CW-2 stated, in substance and in part, that CW-2 believed that only two doctors had been in attendance - Doctor-1 and another doctor ("Doctor-4") - and that the sign-in sheet, which reflected that a third doctor ("Doctor-5") had attended, appeared to be inaccurate. I have compared the purported signature for Doctor-5 from the sign-in sheet for the February 2015 Speaker Program with the signature for Doctor-5 from an October 28, 2014 Speaker Program sign-in sheet, and these signatures do not appear to match.

presentation regarding the Fentanyl Spray occurred at this Speaker Program.

iv. Prior to being hired, CW-3 attended a Speaker Program with ROPER, SSP-1, and Doctor-2, among others, during which Doctor-2 - the designated Speaker - did not utilize any slide presentation regarding the Fentanyl Spray.

b. According to CW-3, Doctor-2 generally did not use the preapproved slide presentation at the Speaker Programs that Doctor-2 led. ROPER - who had previously been Doctor-2's designated SSP - informed CW-3 early in CW-3's tenure that Doctor-2 did not use the slide presentation and that Doctor-2 preferred to talk without visual aids. CW-3 estimated that approximately thirty percent of the Speaker Programs led by Doctor-2 were legitimate educational events where doctors attended who were interested in learning about the Fentanyl Spray. The remaining seventy percent of Doctor-2's Speaker Programs were merely social dinners without an educational component. ROPER attended many of Doctor-2's Speaker Programs, including certain illegitimate Speaker Programs that involved no education regarding the Fentanyl Spray.

c. At Speaker Programs led by Doctor-2, the attendees were often friends and colleagues of Doctor-2 who had attended many prior Speaker Programs. ROPER was aware that many of the same attendees went to Speaker Programs led by Doctor-2 because ROPER went to many of these Speaker Programs himself. According to CW-3, repeat attendees were common at Speaker Programs because it was extremely difficult to have new attendees at every Speaker Program given the frequency with which Speaker Programs were held. CW-3 stated that, because the slide presentation was required to be the same at every legitimate Speaker Program, there was no reason, from an educational perspective, to attend Speaker Programs on a repeated basis.

d. CW-2 and CW-3 both participated in forging sign-in sheets for Speaker Programs so that it appeared that healthcare professionals had attended who had not, in fact, been present. ROPER was aware that sign-in sheets for Speaker Programs were being forged. ROPER at one point instructed CW-3, in substance and in part, to add the names and signatures of attendees that were not actually present to Speaker Program sign-in sheets when necessary. Furthermore, ROPER attended Speaker Programs where an insufficient number of healthcare professionals with prescribing authority had been present and CW-3 indicated that ROPER was aware that the sign-in sheets for such Speaker Programs would have to be forged to make the Speaker Programs appear legitimate.

e. ROPER also attended Speaker Programs with CW-3 where the Speaker's significant other – who was not a healthcare professional – was present. At such Speaker Programs, because the significant other was not allowed to attend under Pharma Company-1 policies, the sign-in sheet would have to be forged to reflect that a healthcare professional had attended who had not actually been present. ROPER was present in these situations and was aware that the sign-in sheets for these Speaker Programs were being forged to hide the fact that the significant other had attended.

f. According to CW-2, ROPER had been present at a Speaker Program where the Speaker's significant other – who was not a healthcare professional – had attended. At this Speaker Program, the significant other waited until a monitor assigned to audit Pharma Company-1 Speaker Programs had departed the restaurant before joining the group at the table. ROPER was aware that the significant other was not permitted to attend the Speaker Program.

g. CW-2 heard from another Pharma Company-1 employee that ROPER went to strip clubs with doctors. CW-3 also knew that ROPER periodically took doctors to strip clubs. Prior to being hired, CW-3 had attended a Speaker Program with ROPER that was led by Doctor-2. After this Speaker Program concluded, ROPER, Doctor-2, CW-3 and others went to a strip club ("Strip Club-1") together. At Strip Club-1, the group was joined by another doctor ("Doctor-6"), who subsequently became a Speaker for Pharma Company-1. Bottles of alcohol on a reserved table were provided for the group at Strip Club-1. CW-3 did not pay for the alcohol or any cover charge while at Strip Club-1. CW-3 was also aware that ROPER and Doctor-2 would frequently go out to bars and clubs together.[10]

h. ROPER decided which doctors would be allocated Speaker Programs on a quarterly basis. ROPER instructed CW-3, in sum and substance, both in writing, including by email, and otherwise that Speaker Programs would be allocated to doctors that were prescribing significant quantities of the Fentanyl Spray. During CW-3's tenure, one of CW-3's designated doctors, Doctor-6, became a Speaker for Pharma Company-1. After Doctor-6 became a Speaker, ROPER subsequently indicated to CW-3, in substance and in part, that ROPER was not pleased with the amount of Fentanyl Spray prescriptions that Doctor-6 was writing. ROPER informed CW-3 that the number of Speaker Programs allocated to Doctor-6 would be reduced as a result. ROPER stated to CW-3, in substance and in part, that Pharma Company-1 would hit Doctor-6 "in his pocket" and that this might cause Doctor-6 to start writing more Fentanyl Spray prescriptions.

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[10] During this investigation, law enforcement reviewed text messages from CW-3's cellular phone in which ROPER and others reference, in sum and substance, ROPER staying out late with Doctor-2, and in which ROPER and CW-3 reference ROPER going to Strip Club-1 with Doctor-2.

i. According to CW-3, ROPER provided CW-3 with the answers to the TIRF REMS examination in order for CW-3 to provide these answers to doctors.[11] Doctors were required to pass the TIRF REMS examination in order to enroll in the TIRF REMS Program and prescribe the Fentanyl Spray.

j. ROPER informed CW-3 that ROPER wanted CW-3 to get a physician's assistant ("PA-1") that worked at Doctor-2's office to write more prescriptions of the Fentanyl Spray. ROPER suggested to CW-3 that CW-3 should do whatever CW-3 had to do to get PA-1 to write prescriptions, even if that meant paying PA-1 cash. CW-3 later learned from PA-1 that ROPER had previously offered PA-1 cash to write prescriptions, but that PA-1 refused to accept the money. CW-3 learned from another employee of Doctor-2's office that ROPER had previously paid for the Christmas party for Doctor-2's office, which took place at a restaurant in Manhattan.

ROPER's Compensation and Promotion

23. Based on my review of documents obtained during the course of this investigation relating to compensation of the Pharma Company-1 sales force, I have learned, among other things, that JONATHAN ROPER, the defendant, received quarterly bonuses that were based on Pharma Company-1's incentive-based compensation system. Under this incentive-based compensation system, ROPER and other District Managers received a bonus based in large part on the sales results of the SSPs assigned to their respective sales territories. By way of example, ROPER received a bonus of over $60,000 in the second quarter of 2014, and

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[11] During this investigation, CW-3 provided law enforcement with a copy of the text message from ROPER to CW-3 that contained the TIRF REMS examination answers.

received a bonus of over $80,000 in the fourth quarter of 2013. As an SSP, ROPER received a bonus based in large part on the volume of prescriptions from the doctors to which he was assigned. By way of example, in the third quarter of 2013, ROPER received a bonus of over $100,000.

24. Pharma Company-1 promoted JONATHAN ROPER, the defendant, to the position of Regional Director towards the end of 2015.

WHEREFORE, the deponent respectfully requests that a warrant issue for the arrest of JONATHAN ROPER, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.

BRUCE WAYNE
Special Agent
Federal Bureau of Investigation

Sworn to before me this
8th day of June, 2016

THE HONORABLE KEVIN N. FOX
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK